

**PAGES 45 THROUGH 48
OF DEFENDANT'S
TRIAL TESTIMONY
INTENTIONALLY OMITTED**

1 parts that's in front of you?

2 A. Okay.

3 Q. Does that refresh your recollection as to what
4 you actually bought and what you paid for it?

5 A. Yes.

6 Q. And in fact you bought \$1800 worth of sound
7 stereo equipment for that vehicle, didn't you?

8 A. Yes.

9 Q. In 2003 -- let me go back a little bit. You
10 said you know Chris Iager; is that right?

11 A. Yes.

12 Q. You've known him many years?

13 A. Yes.

14 Q. Where is he now?

15 A. I don't know.

16 Q. When did he leave Guam?

17 A. I don't know.

18 Q. You haven't seen him for over a year, have
19 you?

20 A. No.

21 Q. In fact, he left before you went into jail in
22 March of '05, didn't he?

23 A. I wouldn't know that.

24 Q. In 2003 and early 2004, isn't it true that
25 Chris Iager was selling ice?

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1 A. I don't know.

2 Q. You did not know that Mr. Mendiola was sending
3 ice to Chris Iager among other people?

4 A. No.

5 Q. To be sold on Guam?

6 A. No.

7 Q. Mr. Aponik, I'm sure you've heard his
8 testimony, that he drove you over to Iager's house
9 where you picked up some ice, and then you two went
10 and smoked it; is that true or not?

11 A. That's not true.

12 Q. Did you ever get any ice from Iager?

13 A. No.

14 Q. Well, where were you getting your ice in 2003?

15 MR. VAN DE VELD: Objection; assumes facts not
16 evidence.

17 BY MS. JOHNSON:

18 Q. You had a cut straw on your person when you
19 were arrested?

20 A. 2003?

21 Q. Yeah, 2003, when you were arrested, where did
22 that ice come from?

23 A. From friends.

24 Q. What friend?

25 A. Uh, I don't remember.

1 Q. You don't remember?

2 A. No.

3 THE COURT: Let's take the noon recess. We'll
4 start up again at 1:00 o'clock.

5 (Luncheon recess taken at 12:01 p.m.)

6 (Proceedings resumed at 1:05 p.m.)

7 (All parties and jurors present.)

8 THE COURT: Please be seated.

9 All right, Ms. Johnson.

10 MS. JOHNSON: Thank you, Your Honor.

11 Q. Mr. Elm, in October of 2004 or thereabouts,
12 Keomi Lujan had a post office box, didn't she?

13 A. Yes.

14 Q. And that was at Guam main facility, is that
15 right?

16 A. Yes.

17 Q. Do you have a key to it?

18 A. No.

19 Q. Why not?

20 A. She's the one picking up the mail.

21 Q. So, the post office records would only show
22 that one key had been issued?

23 A. Yes.

24 Q. And where did she keep that key?

25 A. On the keys for the vehicle.

1 Q. Keys for the what?

2 A. For her -- for her car.

3 Q. Now, the drug testing counsel's asked you
4 about, in fact you had a system to beat it, didn't you?

5 A. No.

6 Q. When you call early in the morning and be
7 advised that you'd be tested, isn't it true that you
8 drank quarts of water, flushed out your system, and
9 then go in and test clean?

10 A. No.

11 Q. You never bragged about that?

12 A. No.

13 Q. Did you ever call Mr. Aponik and tell him not
14 to testify against Mr. Espinosa?

15 A. No, I don't remember that.

16 Q. You heard the testimony of your cousin,
17 Jarrett Elm, that he came into the Aponik warehouse one
18 day to get a drink from the refrigerator, and there was
19 a table there, and he saw you and Mr. Aponik seated at
20 the table with a scale, digital scale between you, and
21 a packet of ice between you; is that true?

22 A. No.

23 Q. Do you know -- what is your relationship with
24 Jarrett Elm?

25 A. He's my cousin.

1 Q. And he's about 10 years younger than you,
2 right?

3 A. Yes.

4 Q. Are you on good terms?

5 A. Uhm, yeah.

6 Q. You've never had a dispute or a falling out?

7 A. Actually, I would -- would ask him -- uh, no.

8 Q. No bad blood between you?

9 A. No.

10 Q. So, do you know why he would say this about
11 you if it wasn't true?

12 A. I wouldn't know why.

13 Q. This white 4Runner you had, you never
14 registered it in your own name, did you?

15 A. No.

16 Q. Why not?

17 A. I'm -- I'm not sure why.

18 Q. Chris Iager, you've denied that you were
19 dealing ice for him during 2003 and 2004; is that
20 correct?

21 A. Yes.

22 Q. Did you ever brag to Mr. Aponik that you were
23 moving 10 to 20 grams a week for Mr. Iager?

24 A. No.

25 Q. You know Albert Mendiola, however, right?

- 1 A. Yes.
- 2 Q. You knew he was in Las Vegas?
- 3 A. No, I didn't know he's in Las Vegas.
- 4 Q. So you didn't even know where he was?
- 5 A. No.
- 6 Q. What is Mr. Iager's phone number?
- 7 A. I can't remember.
- 8 Q. Did he have a cell phone?
- 9 A. I believe so.
- 10 Q. Excuse me?
- 11 A. Yes.
- 12 Q. Okay. And is it true that when you were
- 13 helping Mr. Aponik renovate his warehouse, that
- 14 Mr. Iager would come over there and the three of you
- 15 would smoke ice together?
- 16 A. That wasn't true.
- 17 Q. And is it not true that you gave Jarrett Elm
- 18 ice and shared it with him?
- 19 A. No.
- 20 Q. Exhibit 7 is an analysis of your phone
- 21 records, calls in, calls out. Out of curiosity, whose
- 22 phone is 472-5828?
- 23 A. That would be my sister's.
- 24 Q. Which sister?
- 25 A. Verlyn Aponik.

1 Q. Who?

2 A. Verlyn Aponik.

3 Q. Mr. Aponik's wife?

4 A. Yes.

5 Q. Okay. Who belongs to 828-1041?

6 A. That would be my cousin Katrina, where she
7 works, that's her store in Merizo.

8 Q. How about 678-4038?

9 A. I -- I don't know.

10 Q. How about 637-2117?

11 A. That's my uncle Allan Elm's number.

12 Q. How about 678-4038?

13 A. I don't remember that number.

14 Q. How about 689-9774?

15 A. I don't remember that number.

16 Q. How about 787-6461?

17 A. I don't remember that number.

18 Q. 688-2038?

19 A. I don't remember that number.

20 Q. How about 472-5824?

21 A. I don't know.

22 Q. And yet you say you were calling all these
23 people, friends and relatives just to chat with them?

24 A. Yes.

25 Q. If we go through these records, how many times

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1 will we find calls to Chris Iager during this five-
2 month period?

3 A. I wouldn't know.

4 Q. Will we find any calls to Mr. Iager from you?

5 A. I don't know.

6 Q. You can't remember calling him at all?

7 A. (Pause.) I'm not sure.

8 Q. You're not sure if you called him?

9 A. Yes.

10 Q. If you had, would it be fair to say that it
11 wasn't that often, or you would remember it?

12 A. Yes.

13 Q. So we'd find very few calls from you to
14 Mr. Iager, if any, is that right?

15 A. Yes.

16 Q. The cell phone that you got October 1st; had
17 you ever had one before?

18 A. No.

19 Q. Why did you get one at that particular time,
20 October 1st of 2004?

21 A. To communicate with Keomi.

22 Q. And what had you done to communicate with her
23 all the years before that?

24 A. I would just call her from work or from home.

25 Q. So why the pressing need for a cell phone as

1 of that date?

2 A. No reason.

3 Q. Excuse me?

4 A. No reason.

5 Q. There's no reason. And did you ask her to get
6 the cell phone for you?

7 A. Yes.

8 Q. And you ran up hundreds of dollars worth of
9 bills on it because were you bored; is that your
10 testimony?

11 A. Yes.

12 Q. How could you afford that kind of bills for
13 this cell phone?

14 A. The bills came out, I believe, in every month.

15 Q. Uh-huh.

16 A. And I would pay for it.

17 Q. So from the testimony that you and Ms. Lujan
18 have given, you are certainly not wealthy people?

19 A. Right.

20 Q. In fact, you appear to be watching every penny
21 that you spend, right?

22 A. On and off, yes.

23 Q. You were frugal, is that correct?

24 A. Yes.

25 Q. And yet you took out a cell phone and you ran

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1 up almost \$900 worth of bills and you can't tell us
2 why; is that correct?

3 A. That's over a five-month period.

4 Q. Yes.

5 A. Yes.

6 Q. Over a five-month period?

7 A. Yes.

8 Q. You talked about Exhibit 26, those are the
9 calls to and from Mr. Canovas's phone. Before you got
10 your cell phone, had Mr. Canovas ever called you just
11 to chat?

12 A. I'm not sure, no.

13 Q. Well, he was living in Las Vegas at the time,
14 wasn't he?

15 A. Yes.

16 Q. And wouldn't it be kind of unusual, I mean,
17 your only connection was through your cousin Derek; is
18 that right?

19 A. Yes.

20 Q. And so wouldn't it be unusual for him to call
21 you and run up a bill just chatting with you?

22 A. Yes.

23 Q. It'd be more likely he'll call Derek, right,
24 if he was going to call anybody?

25 A. But my cousin Derek wasn't on island, so --

1 Q. Okay. So there's no reason for him to call
2 Guam at all, would that be correct?

3 A. Yes.

4 Q. And do you recall the barbecue when he was
5 home for the summer after summer school had let out?

6 A. I -- vaguely. I don't recall.

7 Q. You don't recall that barbecue?

8 A. No.

9 Q. And did you ever ask him to send you ice so
10 that you could begin distributing it yourself?

11 A. No.

12 Q. Counsel asked you about these phone calls.
13 For example, the first one that the records show is
14 from Las Vegas, Mr. Canovas's phone, directly to you at
15 1238. What happened during that phone call?

16 A. I can't remember.

17 Q. Well, you testified on direct that he was
18 looking for Eric Aponik; is that true?

19 A. Yes.

20 Q. So you do remember when was looking for
21 Mr. Aponik?

22 A. Yes.

23 Q. And that's your testimony?

24 A. Yes.

25 Q. He didn't call you to tell you that a package

1 of ice was on the way?

2 A. No.

3 Q. And what did you -- did he ask for you to
4 convey a message to Mr. Aponik?

5 A. Certain times, yeah, he'll ask me to just let
6 him know he called or that he'll call him back, he'll
7 try and call back to see if he answers his phone or --

8 Q. Why was he calling you at all?

9 A. I don't know.

10 Q. Why wouldn't he call Mr. Aponik directly?

11 A. I don't know.

12 Q. And leave a message?

13 A. I don't know.

14 Q. The next call -- we have a deposit here
15 October 13, \$1,000 in the Bank of Guam, and then on
16 October 14 he's calling you again; do you remember why?

17 A. No.

18 Q. Was it to ask for Mr. Aponik?

19 A. Could be, yes.

20 Q. You don't know?

21 A. (No response.)

22 Q. But it was not to discuss drugs?

23 A. Right.

24 Q. Or proceeds?

25 A. No.

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1 Q. On the 25th, he calls you twice; do you
2 remember what these calls were about?

3 A. No.

4 Q. On October 25 there was another deposit into
5 the Bank of Guam, and then for the first time in these
6 records on October 29 there's a call from Aponik's
7 phone to him. Mr. Aponik said that you were using his
8 phone to call Las Vegas because he had long distance
9 service; is that true?

10 A. That's not true.

11 Q. You were not using his phone?

12 A. No.

13 Q. Never ever?

14 A. No.

15 Q. Some of these calls look as if they're return
16 calls. For example, October 30th, Aponik's phone is
17 used to call Mr. Canovas, but when he calls back, he
18 calls you, not Mr. Aponik. Do you know why that would
19 be?

20 A. I don't know why.

21 Q. Another example, November 9, Aponik's phone is
22 used to call Canovas at 1116, and 20 minutes later he's
23 calling back, but he's not calling Mr. Aponik, he's
24 calling you; why would that be?

25 A. I -- I don't know.

1 Q. You had no business between the two of you,
2 did you?

3 A. No.

4 Q. So other than drugs, what would this phone
5 call be about?

6 A. Probably looking for Eric, or -- I don't know.

7 Q. Why wouldn't he -- he obviously has
8 Mr. Aponik's phone number; why wouldn't he just call
9 Mr. Aponik?

10 A. I don't know.

11 Q. And why would he think that you would know
12 where Mr. Aponik was?

13 A. Because we're usually together.

14 Q. Because what?

15 A. We're usually together.

16 Q. So, he's not calling in response to a call
17 from you?

18 A. No.

19 Q. When you go through Exhibit 4, Mr. Aponik's
20 records, you never see a phone call from Las Vegas to
21 Mr. Aponik directly, not a single one; can you explain
22 that?

23 A. Could you repeat that?

24 Q. When you look at Exhibit 4, and you scan page
25 after page of records, you see Mr. Aponik's phone being

1 used to call Las Vegas, being used to call Mr. Canovas,
2 and we see Mr. Canovas calling you. There is not a
3 single record of Mr. Canovas calling Mr. Aponik; do you
4 know why that is?

5 A. I don't know why.

6 Q. Now John Cruz said that he heard through your
7 cousin Derek that you were dealing ice and he gave you
8 a call and he purchased a gram from you at Gogue's
9 Market; is that true?

10 A. That's not true.

11 Q. And he said that the next time it was two
12 grams, and it was from your residence; is that true?

13 A. That's not true.

14 Q. He said that he was buying ice from you on an
15 almost daily basis; is that true?

16 A. No.

17 Q. Now, Mr. Cruz is not a friend of yours, is he?

18 A. Yes.

19 Q. Well, he's not a very close friend, is he?

20 A. No.

21 Q. I mean, you see him when you go down to Merizo
22 for barbecues; right?

23 A. Yes.

24 Q. And that's about it, right?

25 A. Yes.

1 Q. Is there any bad blood between you?

2 A. No.

3 Q. Do you know why he would say this about you if
4 it wasn't true?

5 A. I wouldn't know why.

6 Q. Now, counsel had asked you about the phone
7 calls that Mr. Cruz was making, and you said that each
8 time Mr. Cruz was calling you to ask where Eric was; is
9 that right?

10 A. Yes.

11 Q. Okay. So when we look at Exhibit 28, for
12 example, we see on November 6 he called you at 2:13
13 2:47, and 7:31 in the evening. Are all three of these
14 calls to ask where Mr. Aponik is?

15 A. Sometimes my brother B.J. would use his phone
16 to call me, since they both stay in Merizo. So most of
17 those, some of those calls are from my brother, B.J.
18 Elm.

19 Q. Why would he be calling on Mr. Cruz's phone?

20 A. They hang out together.

21 Q. Didn't B.J. have his own telephone?

22 A. No.

23 Q. Who was he living with?

24 A. Uh, with his girlfriend.

25 Q. He didn't have a telephone?

1 A. I wouldn't know that.

2 Q. What?

3 A. I don't know.

4 Q. So now you're saying that these calls from
5 Cruz to you were not necessarily to look for
6 Mr. Aponik, but they were from your brother?

7 A. Yes.

8 Q. How many of them are from your brother?

9 A. I don't know.

10 Q. What was your brother talking about?

11 A. Just checking what I'm doing.

12 Q. Why would your brother be calling within half
13 an hour of the previous call?

14 A. I don't know.

15 Q. We see many times in this record, for example,
16 on January 21st of '05 you were calling Mr. Cruz. Why
17 were you doing that?

18 A. Probably to ask if my brother was with him.

19 Q. Probably?

20 A. Yes.

21 Q. You can't remember?

22 A. No.

23 Q. And you didn't know your brother's
24 girlfriend's telephone number?

25 A. No.

1 Q. And we see what appears to be return calls;
2 for example, on February 12, Mr. Cruz calls you at
3 12:24, and within the hour you're returning his call.
4 Why?

5 A. I don't know.

6 Q. Why would you be calling Mr. Cruz if it were
7 not concerning drugs?

8 A. Probably for my brother.

9 Q. So in effect you're saying that all of these
10 are calls to or from your brother on Mr. Cruz's
11 telephone; is that right?

12 A. Yes.

13 Q. Why would Mr. Cruz let him use his telephone
14 and run up a bill on his phone?

15 A. I don't know.

16 Q. Now Mr. Aponik has said that shortly before
17 you went to jail that you introduced him to Mr. Cruz
18 and put them together so that they could continue this
19 drug operation; is that true?

20 A. That's not true.

21 Q. And yet the very first call that we see from
22 either Aponik to Cruz or Cruz to Aponik does not occur
23 until March 15, three days before you go into jail.
24 Can you explain that?

25 A. I can't.

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1 Q. What?

2 A. I can't.

3 Q. No. Is there any bad blood between you and
4 Mr. Canovas?

5 A. Not that I -- no.

6 Q. Do you know why he'd be saying this about you
7 if it weren't true?

8 A. I wouldn't know why.

9 MS. JOHNSON: Thank you. I have nothing
10 further.

11 THE COURT: Redirect.

12 MR. VAN DE VELD: Let the record reflect that
13 I'm showing the witness Exhibit No. 4 and directing his
14 attention to page 39 center of the page.

15 **REDIRECT EXAMINATION**

16 BY MR. VAN DE VELD:

17 Q. Ms. Johnson said that there were no phone
18 calls from Eric Aponik's phone to Mr. Canovas. Can you
19 tell me what the date is that it shows in Exhibit 4?

20 MS. JOHNSON: Objection. Misstates the
21 question, it was Canovas to Aponik.

22 THE COURT: Rephrase the question.

23 BY MR. VAN DE VELD:

24 Q. Can you please take a look at Exhibit No. 4
25 and tell me what it is that you find in the center of

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1 the page?

2 A. Says here Las Vegas.

3 Q. Okay. And what number is calling, is placing
4 the call according to these charts?

5 A. 777-6211.

6 Q. Okay. And what number is being called?

7 A. 702-491-9712.

8 Q. You have the cell phone records of John V.
9 Cruz?

10 A. No.

11 Q. Do you have the cell phone records of Jonathan
12 Canovas's prepaid phones?

13 A. No.

14 Q. So, would it be accurate to say that you don't
15 know whether or not there were phone calls from those
16 people to Mr. Aponik?

17 A. Yes.

18 Q. Showing you what's marked as Government's
19 Exhibit 31. You indicate that back in 1995 that you
20 had been charged with possession; do you recall that
21 part of your testimony?

22 A. Yes.

23 Q. Okay. And at a further part in your testimony
24 you indicated that 11 years ago you were distributing
25 ice; is that correct?

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1 A. (Nodding.)

2 Q. Okay. If you look at Exhibit 30 -- was it 32
3 I gave you? I'm sorry.

4 A. 31.

5 Q. 31. Do you know whether or not the charge
6 that you actually pled guilty to was possession with
7 intent to distribute?

8 A. No.

9 Q. Okay. What was the charge that you actually
10 pled guilty to?

11 A. Distribution of methamphetamine.

12 Q. Okay. And that was how many years ago?

13 A. 11.

14 Q. Do you know how Eric Aponik received mail
15 before he got his post office box in November of 2004?

16 A. I think it was his dad's mailbox. I'm not
17 sure.

18 Q. And he also at that time was working at
19 Reaction Company; is that correct?

20 A. That's correct.

21 Q. (Pause.) When you called your sister Verlyn
22 at 472-5828, were you calling her to talk to her about
23 drugs?

24 A. No.

25 Q. When you called your cousin Katrina at

1 828-1061, were you calling her to talk to her about
2 drugs?

3 A. No.

4 Q. When you called 637-2117 to talk to your Uncle
5 Allan, were you talking to him about drugs?

6 A. No.

7 Q. So there's lots of phone calls that you've
8 made, isn't that correct?

9 A. Yes.

10 Q. And were any of them about drugs?

11 A. No.

12 MR. VAN DE VELD: Nothing further.

13 THE COURT: Recross.

14 MS. JOHNSON: Nothing further, Your Honor.

15 THE COURT: All right. You may step down.

16 MR. VAN DE VELD: Your Honor, I have the 2005
17 Guam Island Telephone Directory I would like the court
18 to take judicial notice of.

19 THE COURT: Any objection?

20 MS. JOHNSON: For what purpose?

21 MR. VAN DE VELD: The purpose is to show the
22 address of J. C. Marketing, which is the business owned
23 and operated by Mr. Canovas's parents.

24 MS. JOHNSON: Can we not stipulate to that?

25 THE COURT: Why don't you see it, counsel, and

1 you can agree upon the address.

2 (Pause while counsel conferred.)

3 MS. JOHNSON: No objection, Your Honor, we'll
4 stipulate that J. C. Marketing was at the City Air
5 Plaza, 1700 Route 16 in Dededo.

6 THE COURT: All right.

7 MR. VAN DE VELD: Your Honor, I'd further like
8 the court to take judicial notice that under the
9 sentencing guidelines that if a person is found to be a
10 manager, leader, or organizer of a drug activity, that
11 there is a corresponding increase in the offense level
12 which affects the sentence recommendation that's made
13 to the court by the sentencing guidelines, by
14 increasing that sentencing recommendation.

15 THE COURT: Any objection to that?

16 MS. JOHNSON: No.

17 THE COURT: All right.

18 MR. VAN DE VELD: Further, that under those
19 same sentencing guidelines that if you are found to be
20 an organizer, leader, or manager of an activity
21 involving drugs, you are not able to get the two-level
22 reduction for the safety valve which also is a basis
23 for allowing a departure -- excuse me -- the court to
24 not impose a sentence under the mandatory minimums of a
25 statute under Section 3553(e) of Title 18 of the United

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1 States Code.

2 MS. JOHNSON: No objection.

3 THE COURT: All right.

4 MR. VAN DE VELD: At this point in time, Your
5 Honor, defense rests.

6 (End of requested transcript.)

7 * * *

8
9
10 CERTIFICATE OF REPORTER

11
12 CITY OF AGANA)
13) ss.
14 TERRITORY OF GUAM)

15 I, Wanda M. Miles, Official Court Reporter
16 of the District Court of Guam, do hereby certify the
17 foregoing pages 1-71, inclusive, to be a true and
18 correct transcript (excerpt) of the shorthand notes
19 taken by me of the within-entitled proceedings, at the
20 date and time therein set forth.

21 Dated this 24th day of October, 2006.

22
23 Wanda M. Miles
24
25

Wanda M. Miles
Official Court Reporter
District Court of Guam